

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In Re:)	Case No. 14-12762 (AIH)
)	
RALPH W. CONTE and)	Chapter 7
PATRICIA A. CONTE,)	
)	Judge: ARTHUR I. HARRIS
Debtors.)	
)	Adversary Proceeding No.
ALAN J. TREINISH,)	
TRUSTEE IN BANKRUPTCY,)	
1370 Ontario Street, Suite 700)	
Cleveland, Ohio 44113)	
)	
Plaintiff,)	
v.)	
)	
RALPH W. CONTE, JR.)	
13525 N. Partridge Drive)	
Cleveland, Ohio 44125)	
)	
PATRICIA CONTE)	
13525 N. Partridge Drive)	
Cleveland, Ohio 44125)	
)	
NICOLE CONTE)	
7287 Brecksville Road)	
Independence, Ohio 44131)	
)	
CLARENCE B. RADER, LTD.)	
2112 Case Pkwy. S., Suite 9)	
Twinsburg, Ohio 44087)	
)	
ROY P. CONTI aka ROY P. CONTE)	
15112 Tracy Lane)	
Strongsville, Ohio 44136)	
)	

RUTH HASSING)
12650 Detroit Avenue)
Lakewood, Ohio 44105)
)
EDWARD HASSING)
9560 York View Drive)
North Royalton, Ohio 44133)
)
RITA VOLPI)
1664 Gypsy Lane)
Columbus, Ohio 43229)
)
KRISTEN M. SCALISE,)
AS FISCAL OFFICER OF)
SUMMIT COUNTY)
Ohio Building)
175 south Main Street)
Akron, Ohio 44308)
)
Defendants.)

**COMPLAINT TO DETERMINE VALIDITY, PRIORITY AND AMOUNT OF LIENS,
CLAIMS AND OWNERSHIP OF REAL PROPERTY, AND FOR APPROVAL OF
SALE OF ESTATE AND CO-OWNER'S INTERESTS IN REAL PROPERTY
PURSUANT TO 11 U.S.C. § 363(h) AND RULE 7001(3) OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE**

The Plaintiff, Alan J. Treinish, Trustee, by and through counsel, respectfully represents to the Court as follows:

1. Jurisdiction of this proceeding is vested in this Court by virtue of the provisions of 28 U.S.C. § 157 as amended and effective July 10, 1984 as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Local General Order No. 2012-7 entered on April 4, 2012 by the United States District Court for the Northern District of Ohio, and pursuant to 28 U.S.C. § 1334 as amended, in that the matters hereinafter alleged as the complaint of Plaintiff are core proceedings within the core matter jurisdiction of this Court relating, among other things, to the determination and priority of claims and interests in property of the estate, and the sale of the

bankruptcy estate's and a co-owner's interests in such property pursuant to 11 U.S.C. § 363(h) and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure, and with respect to which the Plaintiff consents to the entry of all final orders by the Bankruptcy Court.

2. On April 29, 2014, the Debtors, Ralph W. Conte, Jr. and Patricia A. Conte, filed a joint petition in the United States Bankruptcy Court for the Northern District of Ohio seeking relief under chapter 7 of title 11 of the United States Code (the "Debtors' Case").

3. The Plaintiff, Alan J. Treinish, is the duly appointed and acting Trustee in Bankruptcy in the Debtors' Case.

4. At the time of the commencement of the Debtors' Case, the Debtors were the owners of an undivided 4/12 interest in real estate located on/at Brecksville Road, City of Richfield, County of Summit, and the State of Ohio (**Parcel Nos. 48-00136, 50-01755, 50-01757, 50-01759**), and more fully described as follows:

Situated in the Village of Richfield, and Township of Richfield, County of Summit and State of Ohio and known as being part of Original Richfield Township Lot No. 11, Tract No. 4 and more fully described as follows:

Beginning at a point in the old centerline of Brecksville Road formerly Cleveland-Massillon Road, U. S. 21 (66 feet wide) at its intersection with the centerline of Columbia Road (60 feet wide);

Thence South 13° 41' 50" West along the old centerline of Brecksville Road, as aforesaid, 1138.07 feet to a point on the Westerly prolongation of the Northerly line of a parcel of land conveyed to Roy P. Conti by deed recorded in Volume 5614 Page 281 of Summit County Deed Records and the principal place of beginning;

Thence South 87° 11' 07" East along the Westerly prolongation of the Northerly line of said parcel conveyed to Roy P. Conti and along the Northerly line of said parcel conveyed to Roy P. Conti, 213.60 feet to a point on the Easterly line of a parcel of land conveyed to Clark Palma Corporation by deed recorded in Volume 5245 Page 519 of Summit County Deed Records;

Thence North 13° 41' 50" East along the Easterly line of said parcel conveyed to Clark Palma Corporation, 140.00 feet to a point on the Northerly line of a parcel of land conveyed to Roy P. Conti by deed

recorded in Volume 5245; Page 468 of Summit County Deed Records;

Thence South $87^{\circ} 11' 07''$ East along the Northerly line of said parcel conveyed to Roy P. Conti, 1398.86 feet to a point at the Northeasterly corner thereof;

Thence South $2^{\circ} 48' 53''$ West along the Easterly line of said parcel conveyed to Roy P. Conti 247.40 feet to a point at the Southeasterly corner thereof;

Thence South $74^{\circ} 07' 54''$ West along the Southerly line of said parcel conveyed to Roy P. Conti, 78.43 feet to an angle point;

Thence North $85^{\circ} 17' 12''$ West along the Southerly line of said parcel conveyed to
Roy P. Conti, 881.78 feet to an angle point;

Thence South $85^{\circ} 17' 23''$ West along the Southerly line of said parcel conveyed to Roy P. Conti, 348.13 feet to a point on a line drawn parallel with and distant 140 feet Northeasterly by normal measurement from the centerline of the Ohio Turnpike, said parallel line also being a Northerly line of the Ohio Turnpike;

Thence by the arc of a curve bearing to the left and along the Northerly line of the Ohio Turnpike: Radius = 4723.66 feet, Delta = $0^{\circ} 49' 37''$, Arc = 68.18 feet, Chord = 68.18 feet and Chord Bearing North $66^{\circ} 40' 36''$ West to a point of compound curvature;

Thence by the arc of a curve bearing to the left and along the Northerly line of the Ohio Turnpike: Radius = 6251.66 feet, Delta = $0^{\circ} 24' 15''$, Arc = 44.11 feet, Chord - 44.11 feet and Chord Bearing North $67^{\circ} 17' 30''$ West to a point;

Thence North $87^{\circ} 11' 07''$ West along the Northerly line of the Ohio Turnpike, 60.12 feet to its intersection with a line drawn parallel with and distant 120 feet Northeasterly, by normal measurement from the centerline of Ohio Turnpike, said parallel line being a Northerly line of the Ohio Turnpike;

Thence by the arc of a curve bearing to the left and along the Northerly line of the Ohio Turnpike: Radius = 6231.66 feet, Delta = $0^{\circ} 38' 16''$, Arc = 69.37 feet, Chord = 69.37 feet and Chord Bearing North $68^{\circ} 19' 56''$ West to a point and P.T. of said curve;

Thence North $68^{\circ} 39' 09''$ West along the Northerly line of the Ohio Turnpike, 123.25 feet to a point in the old centerline of Brecksville Road, as aforesaid;

Thence North $13^{\circ} 41' 50''$ East along the old centerline of Brecksville Road, as aforesaid, 51.86 feet to a point and the principal place of beginning and containing 8.9314 acres of land according to a survey by The Western Reserve Engineering and Surveying Company in November, 1971, be the same more or less but subject to all legal highways.

EXCEPTING THEREFROM THE FOLLOWING PARCEL(S):

Description of Parcel 48-01290

7.2283 acres

RTG: RI-00004-03-010-001

Situated in the State of Ohio, County of Summit, Township of Richfield (Township 4 North in the 11th Range of the Connecticut Western Reserve), being part of Original Lot 11 in Tract 4 of said Township, more fully described as follows:

Beginning at a one inch iron bar in a monument box at the intersection of the original centerline of Cleveland-Massillon Road (CH17), originally 66 feet wide, now State Route 21 - Brecksville Road (a variable width right-of-way) and the centerline of Columbia Road, 60 feet wide, as shown in the Friedman Industrial Park Allotment recorded in Plat Book 67 page 63 of the records of Summit County, said point of beginning having Ohio State Plane Coordinate Values (NAD83(86)) of North: 587809.91 and East: 2208377.11;

Thence along the original centerline of Cleveland-Massillon Road South 10 degrees 46 minutes 33 seconds West a distance of 997.94 feet to the southwest corner of a parcel conveyed to Brecksville Road Associates as described in Reception Number 54454944;

Thence along the south line of the said Brecksville Road Associates parcel North 89 degrees 54 minutes 42 seconds East a distance of 356.68 feet, passing over a rebar with survey cap "Courtney" 33.61 feet from said centerline, to the East corporation line of the Village of Richfield, said corporation line being 400 feet east of and parallel to the current centerline of Brecksville Road, and a #6 rebar with survey cap "Summit County Engineer" set at the TRUE PLACE OF BEGINNING;

Thence the following seven (7) courses:

1. Thence continuing along the south line of said Brecksville Road Associates and Corporation line North 89 degrees 54 minutes 42 seconds East a distance of 1255.95 feet to the east line of Original Lot 11 in Tract 4, witness a #4 rebar North 89 degrees 54 minutes 42 seconds East a distance of 0.05 feet;

2. Thence along said Lot/Tract line South 00 degrees 04 minutes 58 seconds East a distance of 247.56 feet to a #5 rebar found;
3. Thence on a line parallel to the north line (course 1) South 89 degrees 54 minutes 42 seconds West a distance of 835.02 feet to the north line of a parcel in the name of the Cleveland Electric Illuminating Company and #6 rebar with survey cap "Summit County Engineer" set;
4. Thence along said north line North 88 degrees 11 minutes 50 seconds West a distance of 120.73 feet to a #4rebar found.;
5. Thence continuing along said north line south 82 degrees 31 minutes 16 seconds West a distance of 30.97 feet to the continuation of said parallel line (from course 3) and a #6 rebar with survey cap "Summit County Engineer" set;
6. Thence along said parallel line South 89 degrees 54 minutes 42 seconds West a distance of 302.88 feet to the East corporation line of the Village of Richfield, said corporation line being 400 feet east of and parallel to the current centerline of Brecksville Road, and a #6 rebar with survey cap "Summit County Engineer" set;
7. Thence along said Corporation line on a curve to the right with a radius of 11022.14 feet, a central angle of 1 degrees 17 minutes 55 seconds, a chord bearing North 07 degrees 35 minutes 05 seconds East, a chord length of 249.80 feet, an arc length of 249.80 feet to the True Place of Beginning.

Containing 7.2283 acres as surveyed in December 2002 by Gene Esser, Summit County Engineer, Professional Surveyor 7414.

The Basis of Bearing is Grid North of the Ohio State Plane Coordinate System, North zone, NAD 83(86) as determined by traverse from County of Summit GIS monument 39 to County of Summit GSM RI-105. To convert to "Grid" Distances multiply the "Ground" distances listed by the project combined factor of 0.999898103.

Permanent Parcel Nos. 48-00136, 50-01755, 50-01757, 50-01759
(the "Real Property").

5. Defendant, Nicole Conte, is the owner of the other undivided 8/12 interest in the Real Property.
6. Partition in kind of the Real Property among the bankruptcy estate and the Defendant,

Nicole Conte, as co-owner (the “Co-owner”), is impracticable.

7. A sale of the bankruptcy estate’s undivided interest in the Real Property would realize significantly less for the estate than the sale of such property free of the interests of the Co-owner.

8. The benefit to the bankruptcy estate of a sale of the Real Property free of the interests of Co-owner outweighs the detriment, if any, to such Co-owner.

9. The Real Property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

10. All of the Defendants named in the caption of this complaint may have or claim to have a lien, claim or other interest in and to the Real Property or the proceeds of any sale thereof.

11. It is necessary to determine the rights and claims, if any, of all of the Defendants with respect to the Real Property described above in order to fully and properly administer the Debtors’ Case under title 11 of the Bankruptcy Code.

12. Each of the Defendants should be required to assert whatever interests they have, or may profess to have, in and to the Real Property described above, or the proceeds thereof, by timely answering this complaint, or be forever barred from asserting any lien, claim or other interest in and to such Real Property or the proceeds thereof.

WHEREFORE, the Plaintiff prays that each of the Defendants named in the caption of this complaint, timely and by written answer to the complaint, assert whatever liens, claims or other interests they may have, or profess to have, in and to the Real Property described in the complaint or the proceeds of any sale thereof, or be forever barred from asserting any lien, claim or other interest in and to such Real Property or the proceeds thereof. Further, the Plaintiff requests authority to sell the interests of the bankruptcy estate and of the Co-owner, Defendant, Nicole Conte, in the Real Property. At the time of trial, in the event any of the Defendants file a

timely answer, the Plaintiff requests that this Court determine the validity, priority and amount of any such liens, claims or other interests of such Defendants and their respective entitlement, if any, to the proceeds of any sale thereof; and for such other and further relief as may be just and equitable in the premises.

Respectfully submitted,

/s/ Robert D. Barr

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Alan J. Treinish, Trustee

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